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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/836,762	04/17/2001	Melanie Patterson	9601927-D	6844

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EXAMINER

VANATTA, AMY B

ART UNIT

PAPER NUMBER

3765

DATE MAILED: 03/05/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/836,762

Applicant(s)

PATTERSON ET AL.

Examiner

Amy B. Vanatta

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 January 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 14 January 2002 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

Drawings

1. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on January 14, 2002 have been approved. Formal drawings including these proposed changes are required.

Claim Rejections - 35 USC § 112

2. Claims 1-5 and 8-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is indefinite in reciting "said first vertical edge being straight and smooth, and said second vertical edge which is also straight and smooth ". The limitation referring to the second vertical edge contains a grammatical error and thus is confusing. A suggested wording for the limitation is: "said second vertical edge also being straight and smooth".

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 6, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Cooper (3,001,646).

Cooper discloses a bib having a generally rectangular planar surface with opposite first and second vertical edges which are parallel as claimed. The bib has supporting means in the form of a neck ring perforation 11. The neck ring is circular and is positioned near but slightly below the uppermost edge as claimed. Cooper also discloses a plurality of such bibs in a linearly aligned, rolled form as in claim 6 (see Fig. 1). The bib includes adhesive tabs (22,23) as in claim 10.

5. Claims 1, 6, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Rose (4,884,299).

Rose discloses a bib having a generally rectangular planar surface with opposite first and second vertical edges which are parallel as claimed. The bib has supporting means in the form of a neck ring perforation (forming neck piece 11 as seen in various embodiments shown in Figs. 1a, 3a, 4a, 5c, 6a-8a, 10a, 11c, and 12a). The neck ring is circular and is positioned near but slightly below the uppermost edge as claimed. Rose also discloses a plurality of such bibs in a linearly aligned, rolled form as in claim 6. The bib includes adhesive tabs as in claim 10 (see, e.g. Fig. 8a).

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Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 2-3, 8-9, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cooper (3,001,646).

Cooper discloses a bib as claimed, however the specific dimensions of the bib are not disclosed. Thus, Cooper does not disclose the dimensions of the diameter, the distance from the uppermost edge to the center point of the neck ring, and the length and width of the bib as in claims 2, 3, and 9. It requires only routine skill in the art to determine the optimal dimensional values based on the intended use of the bib and the size of the intended wearer of the bib. It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the bib of Cooper having the claimed dimensions, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). Furthermore, a change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

Regarding claim 8, Cooper does not disclose the number of tears per inch of the neck perforation. It would have been obvious to one having ordinary skill in the art at the time the

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invention was made to construct the bib of Cooper having three tears per inch in the neck perforation, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). Moreover, it would have been an obvious matter of design choice to provide the perforation of Cooper with three tears per inch, since applicant has not disclosed that the number of tears per inch solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with slightly more or slightly fewer tears per inch.

Regarding claim 11, Cooper teaches that the bib is made of "inexpensive sheet material such as paper and which may be discarded after one use" (col. 1, lines 8-9). Cooper does not specifically disclose the nonwoven material recited in claim 11, however such a material is known to be used for bibs. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the claimed virgin bleached wood pulp and polymer emulsion nonwoven fabric as the material for the bib of Cooper, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

8. Claims 4, 5, and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rose (4,884,299) in view of Bodner et al (4,423,523).

Rose discloses a bib as claimed, however the bib does not have a concave lower protrusion or a concave upper indentation as in claims 4-5 and 7. Bodner et al disclose a bib having a concave lower protrusion (25c for bib 20d in Fig. 1) which extends down from the main planar

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surface in a symmetric, curvilinear manner, having an upward arching lowermost point which smoothly transitions at each end to a horizontal extension at each side as claimed. Bodner discloses an upper convex indentation (25d for bib 20d in Fig. 1) which protrudes inwardly into the main planar surface and is formed in a curvilinear manner, having an upward arching lowermost point which smoothly transitions at each end to a horizontal extension at each side as claimed. Bodner teaches that such a design prevents bleeding of the captured or absorbed fluids by the lower edge of the absorbent part of the bib (col.2, lines 45-48). Rose discloses an embodiment in which the back layer of the bib is a fluid impermeable layer (see, e.g., col. 8, lines 1-5). One having routine skill in the art would recognize that by providing this embodiment of Rose with the structure of Bodner, whereby the impermeable backing layer extends below the absorbent layer, bleeding is prevented such as specifically taught by Bodner. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the bib of Rose with a concave lower protrusion and a convex upper indentation such as claimed in order to prevent bleeding of the captured or absorbed fluids by the lower edge of the absorbent part of the bib, as taught by Bodner.

Response to Arguments

9. Applicant's arguments filed January 14, 2002 have been fully considered but they are not persuasive.

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Regarding the 102(b) rejection of claims 1, 6, and 10 as anticipated by Cooper, applicant argues that Cooper does not teach the elements listed on page 5, line 17 through page 6, line 17 of the Remarks filed 1/14/02. The features upon which applicant relies (i.e., the diameter of the neck ring, the location of the perforation, the concave lower protrusion, etc.) are not recited in claims 1, 6, and 10. The Examiner maintains that all of the structure recited in claims 1, 6, and 10 is disclosed by Cooper as set forth in section 4 above.

Regarding the 102(b) rejection of claims 1, 6, and 10 as anticipated by Rose, applicant argues that Rose does not teach the elements listed on page 6, line 21 through page 7, line 21 of the Remarks filed 1/14/02. The features upon which applicant relies (i.e., the diameter of the neck ring, the location of the perforation, the concave lower protrusion, etc.) are not recited in claims 1, 6, and 10. The Examiner maintains that all of the structure recited in claims 1, 6, and 10 is disclosed by Rose as set forth in section 5 above.

Regarding the combination of Rose in view of Bodner et al (i.e. 103(a) rejection of claims 4, 5, and 7), applicant argues that Bodner does not teach a bib having a convex upper indentation (page 8, lines 11-15 of Remarks filed 1/14/02), however the Examiner contends that Bodner does show such a structure (see section 8 above). Applicant argues that Bodner does not disclose a neck ring perforation or wood pulp fiber and polymer emulsion (pg. 8, line 15 through pg. 9, line 1 of Remarks filed 1/14/02), however the Examiner does not rely on Bodner for such structure. One cannot show nonobviousness by attacking references individually where the rejections are

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based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Also with regard to the combination of Rose in view of Bodner, in response to applicant's arguments that the cited references must teach every element of the claimed invention and that there must be some affirmative teaching in the prior art to make the proposed combination, applicant is referred to the rejection set forth in detail in section 8 above. In that rejection, the Examiner details how every element claimed is taught in the combination of Rose in view of Bodner. Moreover, there is an affirmative teaching in Bodner to make the proposed combination: Bodner specifically teaches that such a design (i.e. the concave lower protrusion and convex upper indentation) prevents bleeding of the captured or absorbed fluids by the lower edge of the absorbent part of the bib. One having routine skill in the art would recognize that by providing the bib of Rose with the structure of Bodner, whereby the impermeable backing layer extends below the absorbent layer, bleeding is prevented such as specifically taught by Bodner.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after


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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amy Vanatta at telephone number (703) 308-2939. The examiner can normally be reached Monday-Thursday from 8:30 to 7:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert, can be reached at (703)305-1025.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0861. Facsimile correspondence for this application should be sent to (703) 305-3579 or (703) 305-3580.


AMY B. VANATTA
PRIMARY EXAMINER
ART UNIT 3765

abv
February 28, 2002